

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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NPFCCCLAIMSINFO@uscg.mil

5890
April 16, 2014

V [REDACTED]

Missouri Department of Natural Resources – Environmental Emergency Response
[REDACTED]

RE: E13709-0001

Dear Mr. Jorgensen:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), offers \$970.15 as full compensation for OPA claim number E13709-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

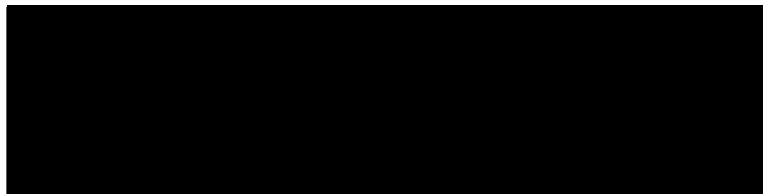
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you

are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.



Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

| | |
|--------------------------|--|
| Claim Number: | E13709-0001 |
| Claimant: | Missouri Department of Natural Resources |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | William Dodson |
| Amount Requested: | \$1,096.00 |

FACTS:

Oil Spill Incident: On 7 Sep 2013, the Missouri Department of Natural Resources (MO DNR) was notified by the US Coast Guard National Response Center ¹ of a dump truck that had struck a bridge and overturned into Bee Creek on Highway 29 North, mile marker 29, ten miles north of Platte City, Missouri. The dump truck was carrying a full load of asphalt, 200 gallons of diesel fuel and various amounts of oil and lubricants that discharged into Bee Creek. Bee Creek is a tributary to the Missouri River, a navigable waterway of the United States.

Description of the Removal Activities for this Claimant: MO DNR responded to the scene of the accident with EPA FOSC James Johnson and provided oversight of the cleanup efforts. The cleanup efforts included the EPA FOSC's activation of their emergency response cleanup contractor who boomed the creek and began remediation of contaminated soil and vegetation from the banks of the creek. At the conclusion of the cleanup, the EPA received a property damage claim letter from the deceased insurer's company seeking to resolve all property damage claims. The offer was in exchange for a full release of liability to the insured. This information was handled by EPA Region 7 and USCG.²

The Claim: On 8 Apr 2014, MO DNR presented a removal claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the total amount of \$1,096.00.³

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33

¹ See NRC Report #1076501 dated 7 Sep 2013

² See email from EPA FOSC James Johnson to MO DNR Donald Kinkhorst

³ See Optional OSLTF Claim Form and associated email dated 8 April 2014

CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. The oil spill response actions undertaken by MO DNR personnel were determined by the EPA FOSC to be consistent with the NCP.⁴ 33 U.S.C. 2702 (b)(1)(B) and 2712 (a)(4);

⁴ See EPA FOSC concurrence email dated 9 Apr 2014

2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.


B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC determined that fringe benefits costs and indirect costs associated with the fringe benefit costs billed by the Claimant in the amount of \$125.85 were not substantiated costs and have been denied for reimbursement. All other costs for actions undertaken in response to this incident have been determined to be reasonable and necessary as determined by the FOSC and consistent with the NCP. The Claims Manager therefore determines that the Claimant did in fact incur \$970.15 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E13709-0001.

The NPFC hereby determines that the OSLTF will pay \$970.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E13709-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$970.15

Claim Supervisor 

Date of Supervisor's review: *16 Apr 2014*

Supervisor Action: *Approved*

Supervisor's Comments: